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UNCLAS SECTION 01 OF 02 LIMA 004217

SIPDIS

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TAGS: [SNAR](#) [PGOV](#) [PINS](#) [PE](#)

SUBJECT: CONSTITUTIONAL TRIBUNAL RULES REGIONAL COCA
ORDINANCES UNCONSTITUTIONAL

REF: A. LIMA 3416

[B](#). LIMA 3264

[C](#). LIMA 3033

[D](#). LIMA 2813

[E](#). LIMA 2699

[1](#). SUMMARY: The Constitutional Tribunal (TC), on 9/27, ruled unconstitutional the pro-coca ordinances issued by the Cuzco and Huanuco regional governments. While siding with the GOP on the main legal point -- that coca policy is exclusively within the national government's domain -- the TC also harshly criticized the government's coca policies and their implementation, exhorted the GOP and its anti-drug agency DEVIDA to implement more effectively its Program of Alternative Development, called on the Congress to include the coca plant in the list of plants recognized as "Natural Patrimony of the Nation," and asked the National Institute of Culture to declare the traditional use of coca as "Cultural Patrimony." The TC's recommendations to recognize traditional coca as national or cultural patrimony are of concern, and we will be consulting with our counter-narcotics and legal sector contacts as to their implications. END SUMMARY.

[2](#). The TC's decision was announced on 9/27, just four days after it held oral hearings on the GOP's challenge to the Huanuco and Cuzco coca ordinances (Refs A, B, D, E). In its 59-page ruling (available at www.tc.gob.pe), the Tribunal:

-- held that the Cuzco and Huanuco regional governments' pro-coca ordinances were unconstitutional.

-- called on President Alejandro Toledo to re-evaluate Peru's national and international anti-narcotics policies so as to make them more "efficient and in accordance with the national and regional law and reality," in particular with the critique of the GOP's policy made by the consultancy Grupo de Analisis para el Desarrollo (Analysis Group for Development or GRADE), whose findings that the GOP placed too much emphasis on forced eradication and not enough on interdicting precursor chemicals were cited approvingly by the TC in paragraphs 135-142 of its ruling.

-- called on Congress to include, "as soon as possible," the coca leaf plant in the list of plants recognized as "Natural Patrimony of the Nation."

-- called on the National Institute of Culture to initiate the administrative proceedings necessary "to evaluate the technical appropriateness of declaring the traditional use of the coca leaf plant as non-material cultural patrimony, in conformance with international rules."

-- called on the Executive Branch, and in particular DEVIDA, to adopt the necessary measures to implement, "as soon as possible," the Program of Alternative Development provided in the National Strategy in the Fight Against Drugs 2002-2007, which was approved by Supreme Decree in 2005.

[3](#). DEVIDA Director General Fernando Hurtado praised the TC's decision, which he claimed "cleansed" the country's international image that had been tarnished by the regional coca ordinances. Hurtado went on to urge Congress to pass the Coca Leaf Law proposed earlier this year by the government (Ref C), commenting that this law, combined with the issuance of regulations implementing the Precursor Chemicals Law should provide the GOP with the tools to carry out the TC's directives.

[4](#). Independent Moralizing Front (FIM) Congressman Fausto Alvarado said that his party, which had previously supported fellow-FIM Cuzco Regional President Carlos Cuaresma on the Cuzco coca ordinance, accepted the TC's ruling and would abide by it. Alvarado added, however, that the Cuzco Regional Government had the right to take the "measures it deems convenient" in response. Cuaresma himself said that he would obey the ruling, hinted that Cuzco may appeal it to higher legal bodies (i.e., the Inter-American Court of Human Rights), and warned that it could spark cocalero protests.

[5](#). Huanuco Regional Vice President Hamilton Estacio also stated that the Huanuco Regional Government would respect the TC's decision. He added that it would continue to promote the registration of Huanuco cocaleros as licit growers and oppose the forced eradication of coca leaf.

16. COMMENT: The Constitutional Tribunal's ruling clearly establishes the essential constitutional/legal doctrine that anti-narcotics and coca leaf policy in Peru are the exclusive domains of the national government. This should obviate concerns that regional and municipal authorities will attempt to issue their own coca/drug regimes. The TC's critique of GOP anti-drug policies and their implementation, as well as its recommendations to recognize traditional coca leaf and its use as national and cultural patrimony are of concern, however, and we will be consulting with our counter-narcotics and legal contacts as to their implications. END COMMENT.
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